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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

SALSBURY INDUSTRIES,
Petitioner,
v.
UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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AMICUS CURIAE BRIEF OF NORTH AMERICAN MANUFACTURING CORPORATION IN SUPPORT OF PETITIONER

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North American Manufacturing Corporation ("North American") respectfully submits this brief as amicus curiae in support of the petitioner, Salsbury Industries ("Salsbury").[1]

INTEREST OF *AMICUS CURIAE*

North American is a manufacturing firm located in Pennsylvania. The interest of North American in this case arises from the fact that, along with the petitioner Salsbury Industries ("Salsbury"), North American was the recipient of a substantial fixed price, definite quan-

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[1] Pursuant to Rule 36.1 of this Court, consent to the filing of this brief has been granted by both parties and their written consents have been filed with the Clerk.

tity contract to provide aluminum door lockboxes to the Postal Service under Solicitation No. 104230-82-B-0068. Like Salsbury's, North American's contract was terminated "for the convenience of the Postal Service" in light of the decision in *Doninger Metal Products Corp. v. United States Postal Service*, Civil No. 83-2725 (D.D.C.), *app. dism.*, No. 84-5153 (D.C. Cir. 1984). At the time of termination, North American was successfully completing deliveries of lockboxes to the Postal Service and had earned delivery incentive payments.

On May 20, 1985, North American filed an appeal with the Postal Service Board of Contract Appeals ("PSBCA").[2] The Postal Service moved to dismiss North American's appeal on the ground that North American had not properly certified its claim. Rather than grant the motion to dismiss, the PSBCA suspended North American's case until a properly certified claim was denied by the Postal Service and North American amended its complaint. However, once the Postal Service officially denied North American's fully certified claim, the Postal Service contracting officer gave North American the option of appealing to the United States Claims Court or the PSBCA. Hoping to consolidate its case with petitioner Salsbury's case in the Claims Court, North American filed its complaint with the Claims Court, on August 18, 1986.[3] The Postal Service then moved to dismiss North American's complaint in the Claims Court, claiming that the PSBCA had jurisdiction over the matter. On July 22, 1988, the Claims Court heard oral argument on the Postal Service's Motion to Dismiss but deferred decision on the jurisdictional question, allowing suspension of the matter until resolution of Salsbury's case in the Claims Court. Continued suspensions in both the PSBCA and the Claims Court have been granted to North American at each step of Salsbury's appeal proc-

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[2] *In Re North American Manufacturing*, PSBCA Dkt. No. 1386.

[3] *North American v. United States*, Cl. Ct. No. 531-86C.

ess. Thus, North American currently has its case suspended in both forums until this Court resolves Salsbury's suit.

North American's interest in this case is very real, immediate and direct. North American's claim against the Postal Service is in excess of $573,000.00, plus interest. If the decision below is not reversed, North American's case is effectively moot regardless of which forum below finally exercises jurisdiction. *Salsbury* will be dispositive since both cases arise from the same transaction and call for the determination of the same questions. It is likely that North American will suffer the same fate as Salsbury unless this Court reverses the lower court's decision.

REASONS FOR GRANTING THE PETITION

North American wholeheartedly agrees with the petitioner that the Court of Appeals below erred in holding that termination of Salsbury's contract was a proper use of the termination for convenience clause. The petitioner's arguments persuasively demonstrate why the Court should grant certiorari in this case.

North American emphasizes that, if the decision of the Court of Appeals is allowed to stand, the ability of private sector contractors to rely upon contracts made with the Postal Service or any other government agency will be effectively curtailed. By allowing the government to abrogate its contracts in circumstances in which the underlying reason for the breach is the government's own wrongdoing creates a situation where the government is no longer a reliable partner. Such a decision will disrupt government contracting activities by creating an atmosphere of uncertainty for those who do business with the government. If allowed to stand, the decision below will discourage private contractors from dealing with the government or will force those who continue to enter into government contracts to increase costs to

cover such uncertainties, costs which surely will be passed on to the taxpayer or, as here, to the postal consumer. Clearly, the private sector should not bear the burden of the government's mistakes.

CONCLUSION

For the foregoing reasons, North American urges this Court to grant Salsbury's petition.

Respectfully submitted,

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